

Calendar No. 1071

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
110-495

THE DAM REHABILITATION AND REPAIR ACT OF 2007

SEPTEMBER 24 (legislative day, SEPTEMBER 17), 2008.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany H.R. 3224]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (H.R. 3224) to amend the National Dam Safety Program Act to establish a program to provide grant assistance to States for the rehabilitation and repair of deficient dams, reports favorably thereon and recommends that the bill do pass.

PURPOSES OF THE LEGISLATION

H.R. 3224 would require the Federal Emergency Management Agency (FEMA) to create a program to provide grant assistance to states for use in rehabilitating publicly-owned deficient dams.

GENERAL STATEMENT AND BACKGROUND

According to the Association of State Dam Safety Officials (ASDSO), there have been 129 dam failures since 1999, including the dam failure at the Ka Loko Dam in Hawaii, which killed seven people and caused millions of dollars of damage in March 2006. The ASDSO has also estimated that \$36.2 billion is needed to rehabilitate dams throughout the nation, including \$10.1 billion to deal with the most critical dams that pose a direct risk to human life should they fail.

H.R. 3224 would address this situation by expanding the National Dam Safety Program to include grant assistance to states for use in rehabilitating publicly-owned deficient dams.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section establishes the bill title as the “Dam Rehabilitation and Repair Act of 2007”.

Section 2. Rehabilitation and repair of deficient dams

Subsection (a) amends section 2 of the National Dam Safety Program Act (33 U.S.C. 467) by inserting definitions for “deficient dam” and “rehabilitation”. A “deficient dam” is defined as one that fails to meet the minimum dam safety standards of the State in which it is located and that poses an unacceptable risk to the public. The term “rehabilitation” is defined as the repair, replacement, reconstruction, or removal of a dam that is carried out to meet applicable State dam safety and security standards.

Subsection (b) adds a new section 8A to the National Dam Safety Program Act to direct FEMA to create a program to provide grant assistance to States for use in the rehabilitation of publicly-owned deficient dams. The new section 8A(b) sets out requirements for the applications and project agreements for grants, including applying Federal prevailing wage laws to construction work related to rehabilitation of dams undertaken with this grant assistance.

The new section 8A(c) obligates the Director of FEMA, in consultation with the National Dam Safety Review Board, to create a risk-based priority system for use in identifying deficient dams for which grants may be awarded as a result of this section. The new section 8A(d) establishes the following formula for distributing this grant assistance: In any fiscal year, one-third of funds appropriated will be divided equally among the States applying for grants. The remaining two-thirds of funds will be disseminated to applying States based on a specific ratio. The ratio consists of the number of non-Federal publicly-owned dams that the Secretary of the Army identifies in the national inventory of dams that comprise a danger to human health and that are located within the boundaries of the State as such number relates to the number of non-Federal publicly-owned dams so identified located within the boundaries of all applying States.

The new section 8A(e) establishes that the Federal share of the cost of rehabilitation of a deficient dam may not exceed 65 percent.

The new section 8A(f) authorizes appropriations of \$10 million in fiscal year (‘FY’) 2008; \$15 million in FY 2009; \$25 million in FY 2010; \$50 million in FY 2011; and \$100 million in FY 2012. Also, this subsection authorizes \$400,000 for each of fiscal years 2008 through 2010 to finance additional FEMA staff needed to carry out the grant program.

Section 3. Rulemaking

This section requires that, not later than 90 days after the date of enactment of this Act, the Director of FEMA must issue a notice of proposed rulemaking regarding the program described in Section 2.

This section requires that, not later than 120 days after the date of enactment of this Act, the Director of FEMA shall issue a final rule regarding the program described in Section 2.

LEGISLATIVE HISTORY

H.R. 3224 was introduced by Representative John T. Salazar of Colorado. On October 30, 2007, the bill was received in the Senate, read twice and referred to the Committee on Environment and Public Works. The Committee met on September 17, 2008, when H.R. 3224 was ordered favorably reported by voice vote.

ROLLCALL VOTES

There were no roll call votes during the consideration of the Dam Rehabilitation and Repair Act of 2008 by the Committee.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes evaluation of the regulatory impact of the reported bill. The Committee finds that this legislation, which makes grants to address deficient dams, does not cause substantial regulatory impacts.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Committee finds that this legislation does not impose intergovernmental or private sector mandates as defined under UMRA.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

SEPTEMBER 23, 2008.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3224, the Dam Rehabilitation and Repair Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3224—Dam Rehabilitation and Repair Act of 2007

Summary: H.R. 3224 would authorize appropriations totaling about \$190 million through 2012 for the Federal Emergency Management Agency (FEMA) to make grants to states for repairing, replacing, reconstructing, and removing structurally deficient dams. Assuming appropriation of the specified amounts, CBO estimates that implementing H.R. 3224 would cost \$143 million over the 2009–2013 period and \$47 million thereafter. Enacting H.R. 3224 would not affect direct spending or revenues.

H.R. 3224 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3224 is shown in the following table. The costs

of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009–2013
Authorization Level	15	25	50	100	0	190
Estimated Outlays	4	12	25	51	51	143

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the start of fiscal year 2009 and that the amounts specified by the act will be appropriated for each fiscal year.

Grants to States

H.R. 3224 would authorize the appropriation of \$190 million through 2012 for FEMA to make grants to states for a maximum of 65 percent of the cost to repair, replace, reconstruct, or remove publically owned dams determined to be deficient. Deficient dams would be defined as those failing to meet minimum standards set by states and that pose an unacceptable level of risk to the public. One-third of the funds authorized by the act would be equally divided among all states that apply for assistance. The remaining two-thirds would be awarded based on the number of deficient dams within a state compared with all other applicants.

Based on historical expenditure patterns for similar activities, CBO estimates that spending for the proposed grants would total \$142 million over the 2009–2013 period. This estimate assumes that grant funds would be disbursed as construction and repairs occur and that projects would take an average of three years to complete.

Administration

H.R. 3224 also would authorize the appropriation of \$400,000 a year through 2010 for the salaries and related expenses of additional staff necessary for FEMA to implement the grant program. CBO estimates that implementing this provision would cost about \$1 million over the next five years.

Intergovernmental and private-sector impact: H.R. 3224 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. States would benefit from the grants provided in this legislation, and any costs those governments incur to comply with grant requirements would be incurred voluntarily as conditions of receiving that federal assistance.

Previous CBO estimate: On August 14, 2007, CBO transmitted a cost estimate for H.R. 3224 as ordered reported by the House Committee on Transportation and Infrastructure on August 2, 2007. That version is similar to this legislation; however, CBO estimates total costs over the next five years to be greater under the Senate version of the legislation because of a later assumed enactment date.

Estimate prepared by: Federal costs: Daniel Hoople; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director
for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

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NATIONAL DAM SAFETY PROGRAM ACT

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) BOARD.—The term “Board” means a National Dam Safety Review Board established under section 8(f).

(2) DAM.—The term “dam”—

(A) means any artificial barrier that has the ability to impound water, wastewater, or any liquid-borne material, for the purpose of storage or control of water, that—

(i) is 25 feet or more in height from—

(I) the natural bed of the stream channel or watercourse measured at the downstream toe of the barrier; or

(II) if the barrier is not across a stream channel or watercourse, from the lowest elevation of the outside limit of the barrier;

to the maximum water storage elevation; or

(ii) has an impounding capacity for maximum storage elevation of 50 acre-feet or more; but

(B) does not include—

(i) a levee; or

(ii) a barrier described in subparagraph (A) that—

(I) is 6 feet or less in height regardless of storage capacity; or

(II) has a storage capacity at the maximum water storage elevation that is 15 acre-feet or less regardless of height;

unless the barrier, because of the location of the barrier or another physical characteristic of the barrier, is likely to pose a significant threat to human life or property if the barrier fails (as determined by the Director).

(3) DEFICIENT DAM.—*The term “deficient dam” means a dam that the State within the boundaries of which the dam is located determines—*

(A) fails to meet minimum dam safety standards of the State; and

(B) poses an unacceptable risk to the public.

[(3)](4) DIRECTOR.—The term “Director” means the Director of FEMA.

[(4)](5) FEDERAL AGENCY.—The term “Federal agency” means a Federal agency that designs, finances, constructs,

owns, operates, maintains, or regulates the construction, operation, or maintenance of a dam.

[(5)](6) **FEDERAL GUIDELINES FOR DAM SAFETY.**—The term “Federal Guidelines for Dam Safety” means the FEMA publication, numbered 93 and dated June 1979, that defines management practices for dam safety at all Federal agencies.

[(6)](7) **FEMA.**—The term “FEMA” means the Federal Emergency Management Agency.

[(7)](8) **HAZARD REDUCTION.**—The term “hazard reduction” means the reduction in the potential consequences to life and property of dam failure.

[(8)](9) **ICODS.**—The term “ICODS” means the Interagency Committee on Dam Safety established by section 7.

[(9)](10) **PROGRAM.**—The term “Program” means the national dam safety program established under section 8.

(11) *REHABILITATION.*—*The term “rehabilitation” means the repair, replacement, reconstruction, or removal of a dam that is carried out to meet applicable State dam safety and security standards.*

[(10)](12) **STATE.**—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

[(11)](13) **STATE DAM SAFETY AGENCY.**—The term “State dam safety agency” means a State agency that has regulatory authority over the safety of non-Federal dams.

[(12)](14) **STATE DAM SAFETY PROGRAM.**—The term “State dam safety program” means a State dam safety program approved and assisted under section 8(e).

[(13)](15) **UNITED STATES.**—The term “United States”, when used in a geographical sense, means all of the States.

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SEC. 8. NATIONAL DAM SAFETY PROGRAM.

(a) **IN GENERAL.**—The Director, in consultation with ICODES and State dam safety agencies, and the Board shall establish and maintain, in accordance with this section, a coordinated national dam safety program. The Program shall—

(1)* * *

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SEC. 8A. REHABILITATION AND REPAIR OF DEFICIENT DAMS.

(a) *ESTABLISHMENT OF PROGRAM.*—*The Director shall establish, within FEMA, a program to provide grant assistance to States for use in rehabilitation of publicly-owned deficient dams.*

(b) **AWARD OF GRANTS.**—

(1) *APPLICATION.*—*A State interested in receiving a grant under this section may submit to the Director an application for such grant. Applications submitted to the Director under this section shall be submitted at such times, be in such form, and contain such information, as the Director may prescribe by regulation.*

(2) *IN GENERAL.*—Subject to the provisions of this section, the Director may make a grant for rehabilitation of a deficient dam to a State that submits an application for the grant in accordance with the regulations prescribed by the Director. The Director shall enter into a project grant agreement with the State to establish the terms of the grant and the project, including the amount of the grant.

(3) *APPLICABILITY OF STANDARDS.*—The Director shall require States that apply for grants under this section to comply with the standards of section 611(j)(9) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(j)(9)), as in effect on the date of enactment of this section, with respect to projects assisted under this section in the same manner as recipients are required to comply in order to receive financial contributions from the Director for emergency preparedness purposes.

(c) *PRIORITY SYSTEM.*—The Director, in consultation with the Board, shall develop a risk-based priority system for use in identifying deficient dams for which grants may be made under this section.

(d) *ALLOCATION OF FUNDS.*—The total amount of funds appropriated pursuant to subsection (f)(1) for a fiscal year shall be allocated for making grants under this section to States applying for such grants for that fiscal year as follows:

(1) One-third divided equally among applying States.

(2) Two-thirds among applying States based on the ratio that—

(A) the number of non-Federal publicly-owned dams that the Secretary of the Army identifies in the national inventory of dams maintained under section 6 as constituting a danger to human health and that are located within the boundaries of the State; bears to

(B) the number of non-Federal publicly-owned dams that are so identified and that are located within the boundaries of all applying States.

(e) *COST SHARING.*—The Federal share of the cost of rehabilitation of a deficient dam for which a grant is made under this section may not exceed 65 percent of the cost of such rehabilitation.

(f) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—There is authorized to be appropriated to carry out this section—

(A) \$10,000,000 for fiscal year 2008;

(B) \$15,000,000 for fiscal year 2009;

(C) \$25,000,000 for fiscal year 2010;

(D) \$50,000,000 for fiscal year 2011; and

(E) \$100,000,000 for fiscal year 2012.

(2) *STAFF.*—There are authorized to be appropriated to provide for the employment of such additional staff of FEMA as are necessary to carry out this section \$400,000 for each of fiscal years 2008 through 2010.

(3) *PERIOD OF AVAILABILITY.*—Sums appropriated pursuant to this section shall remain available until expended.

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